

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

For Online Publication Only

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THERESA GRANT,

Plaintiff,

-against-

ORDER

16-CV-00853 (JMA)(ARL)

DETECTIVE GERARD GIAMBRUNO, POLICE
OFFICER TRILLO #910, POLICE OFFICER
DUNN #1098, POLICE OFFICER DOUGLAS
HANDIMAN, # 8193, F.B.I. SPECIAL AGENT
JEREMY A. BELL, A.D.A. SUPERVISOR
WARREN THORER, SERGEANT TIMOTHY
P. MENSCH, SERGEANT MURPHY, U.S.
CUSTOMS SUPERVISOR BOW, U.S.
CUSTOMS K-9 COVE,

Defendants.
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AZRACK, United States District Judge:

On February 12, 2016, pro se plaintiff Theresa Grant filed a complaint against defendants Detective Gerard Giambruno, Police Officer Trillo #910, Police Officer Dunn #1098, Police Officer Douglas Handiman #8193, Assistant District Attorney Supervisor Warren Thorer, Sergeant Timothy P. Mensch, and Sergeant Murphy, (collectively, the “County Defendants”) along with Federal Bureau of Investigation (F.B.I.) Special Agent Jeremy A. Bell, U.S. Customs Supervisor Bow, and U.S. Customs K-9 Officer Cove (collectively, the “Federal Defendants”) for violations of her constitutional rights. On August 18, 2018, the Federal Defendants filed a motion to dismiss the complaint. On the same day, the County Defendants also filed a motion to dismiss.

On May 16, 2018, the Court referred these motions to magistrate Judge Arlene R. Lindsay for a Report and Recommendation (R&R). On July 20, 2018, Judge Lindsay issued an R&R recommending that the County Defendants’ motion be granted and the Federal Defendants’ motion

be granted, both without prejudice, and with leave to amend. The R&R was served on plaintiff on July 23, 2018. (ECF Nos. 55, 56.) The R&R explicitly advises that the parties have fourteen (14) days from service of the R&R to file written objections, and that failure to file objections will result in a waiver of those objections for purposes of appeal. (R&R at 19.) No objections to the R&R were filed.

In reviewing a magistrate judge's report and recommendation, the court must "make a de novo determination of those portions of the report or . . . recommendations to which objection[s][are] made." 28 U.S.C. § 636(b)(1)(C); see also Brown v. Ebert, No. 05-CV-5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006). The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

As noted above, no objections have been filed to the R&R and the time for objections has passed. The Court has reviewed the R&R for clear error and finding no such error, adopts Judge Lindsay's R&R in its entirety as the opinion of the Court. Accordingly, the Court grants the County Defendants' motion to dismiss, and grants the Federal Defendants' motion to dismiss, and dismisses plaintiff's complaint in its entirety, without prejudice, and with leave to amend.

Plaintiff is afforded an opportunity to amend her complaint in accordance with this Order. Plaintiff's amended complaint must be labeled as an "amended complaint," bear the same docket number as this Order, 16-CV-00853 (JMA)(ARL), and must be filed by September 10, 2018. Plaintiff is advised that an amended complaint completely replaces the original complaint, so plaintiff must include all allegations she wishes to pursue against defendant in the amended

complaint. Further, if plaintiff does not file an amended complaint within the time allowed, all of plaintiff's claims will be dismissed with prejudice, judgment shall enter, and this case shall be closed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and, therefore, in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962). The Clerk of Court is directed to mail a copy of this Order to the pro se plaintiff.

SO ORDERED.

Date: August 10, 2018
Central Islip, New York

/s/ (JMA)
Joan M. Azrack
United States District Judge